

EXHIBIT 5

Class Members' Monetary Distribution Formula

The two million two hundred eighty-six thousand four hundred and fifty-nine dollar (\$2,286,459) Claims Fund shall be distributed according to the process and formula outlined below. The five hundred thousand (\$500,000) Contribution Fund shall additionally be distributed in equal portions to the Class Agent and Mediation Representatives.

1. So that Class Counsel may identify the Class Members¹ entitled to receive a monetary award, the amount of such award, and appropriate withholding amounts, within fifteen (15) days of Final Approval, Goddard will provide Class Counsel a database in readily usable format containing the following information for each Class Member:

- a. Name and Social Security Number;
- b. Current grade and step, or if retiree or departed employee, grade and step at retirement or departure;
- c. Time in grade at GS-13 and GS-14 through February 25, 2002, or retirement or departure;
- d. Each grade change out of GS-13 or GS-14, including both promotions and demotions during the Class Member's tenure at Goddard through February 25, 2002, or retirement or departure, and the date of each such change;
- e. The number of annual "high ratings," as defined below, each Class Member received between April, 1991 and February 25, 2002;
- f. Whether the Class Member is a member of FERS or CSRS;
- g. Whether the Class Member has filed a formal race discrimination claim(s) against NASA Goddard for denial of a promotion to a GS-14 or GS-15 non-managerial, non-supervisory position as a scientist or engineer at any time between April 1993 to February 25, 2002, and if so, the date of such claim(s) and whether such claims have been settled or adjudicated²; and
- h. If the Class Member is retired, the retirement effective date, or if departed, the departure date.

¹This formula applies only to Class Members who have not previous to this Settlement signed a valid release of or had finally adjudicated a race discrimination claim for non-promotion to a GS-14 or GS-15 non-managerial, non-supervisory position as a scientist or engineer between April 1991 to February 25, 2002. Those who have settled such claims or have had such a claim adjudicated may not be eligible for an award, or may be eligible for a reduced award.

² NASA Goddard will seek express permission of any Class Member prior to releasing information regarding an EEO race complaint for promotion to non-managerial, non-supervisory GS-14 or GS-15 positions as a scientist of engineer that has not been adjudicated or settled. If the Class Member does not agree to release such information, it will not be released and the Class Member will be deemed to have waived his or her right to receive points under this formula for such claim(s).

2. Class Counsel will promptly make available to any Class Member, on request, a synopsis of the data received by Class Counsel from Goddard pertaining to that Class Member. Any Class Member desiring to receive this synopsis may do so by writing within thirty (30) days of approval to "Administrator for NASA Goddard Class" at P.O. Box No. 10888, Tallahassee, Florida 32302-2888. Goddard shall also permit Class Counsel to post one representative of Counsel at a Goddard building most convenient to the Class on or about the thirty-fifth (35th) day following Final Approval so that Class Members may verify their data in person. Class Members have sixty (60) days from Final Approval to challenge in writing the accuracy of the data to be used in determining their eligibility for an award, which challenge must be in writing, postmarked no more than 60 days following final approval, and addressed to "Administrator for NASA Goddard Class" at P.O. Box No. 10888, Tallahassee, Florida 32302-2888. Such challenge shall be strictly limited to demonstrable factual inaccuracies concerning dates of hire, retirement, time in grade, and the like.

3. Using the data identified above, within one hundred twenty (120) days of Final Approval, Class Counsel's expert will perform an analysis of Class Members to determine the appropriate time-in-grade to be used for each Class Member. The time-in-grade for each Class Member will be determined as follows:

a. For each Class Member, the expert will compile a list of grades, limited only to GS-13 and GS-14, that the Class Member served in between April 19, 1991 and February 25, 2002 or retirement or departure from NASA Goddard. For each such grade, a calculation will be made of the length of time that such Class Member served in that grade during the entire time he or she worked in the federal civil service through February 25, 2002 or retirement. The time-in-grade used for each Class Member will be the longest amount of time that the employee spent in any single such grade.

For example, if an employee currently in grade 14 served in grades 13 and 14 during the period from April, 1991 to February 25, 2002, a calculation will be made of the amount of time spent in each of grades 13 and 14. The result might be as follows: GS-13, 48 months; GS-14, 188 months. For purposes of calculating the time-in-grade score, that Class Member would have a time-in-grade score of 188 months based on the amount of time served as a GS-14. If the employee had served 188 months as a GS-13, his time-in-grade score would be 188 months because it is based on the GS-13 grade.

b. All Class Members will receive one point for each year of his or her time-in-grade score, or pro rata portion thereof.

4. For each Class Member, a calculation will be made as to the total number collectively of "Outstanding," "Highly Successful," and after 1997, "Pass" *plus* an employee performance award (collectively referred to as "high ratings") annual ratings the employee received, limited to those received when the employee was in a GS-13 or

GS-14 position, and further limited to those received following April 19, 1991 up to February 25, 2002. Class Members will receive one point for each such “high rating.”

5. For each Class Member, points will be assigned for their monetary contribution to the prosecution of the case. Class Members who contributed will receive 2 points for every \$100 paid (which funds covered expert fees and expenses).

6. For each Class Member, the number of points he or she is assigned pursuant to the time-in-grade calculation is added to the number of points assigned to the high-rating calculation and the number of monetary contribution points. Each Class Member will then have five (5) points subtracted from his or her total points for each promotion such Class Member received from grade 13 or 14 to grade 14 or 15 respectively between April 1991 to February 25, 2002. Any Class Member who was promoted on more than one occasion to a particular grade shall have deducted only a total of five points for promotions to that particular grade.

7. Each Class Member will then have added to the number of points he or she is assigned pursuant to paragraph five above five (5) points for any formal EEO race complaint such Class Member has made for denial of a promotion to a GS-14 or GS-15 non-management position as a scientist or engineer at NASA Goddard at any time during their tenure until February 25, 2002.

8. When the total net points for each Class Member have been determined, each Class Member’s distribution shall be equal to the Class Member’s total net points divided by the total net points of the class as a whole, multiplied by \$2,286,459.00.

9. After completion of steps one through eight, Class Counsel shall promptly notify those Class Members of their projected award, and that their proposed award is being submitted to the presiding Administrative Judge for approval. Within thirty (30) days thereafter, Class Members may appeal their award to Class Counsel in writing. Such Class Members will be provided with the mathematical computation of their own points exclusively (based on the previously approved personnel data), and the sole basis for upholding an appeal shall be a computational error. The appeal must be postmarked within thirty (30) days of mailing of the award notification, and mailed to “Administrator for NASA Goddard Class” at P.O. Box No. 10888, Tallahassee, Florida 32302-2888.

10. After completion of steps one through nine, Class Counsel shall file with the presiding Administrative Judge, under seal, a list of the Class Members to receive monetary awards and the type of award for approval, any appeals and responses thereto, along with the calculations and ranked list of Class Members.

11. All proposed awards are subject to adjustment pending resolution of any appeals and approval of the presiding Administrative Judge.

12. On the presiding Administrative Judge's approval of the awards, Class Counsel shall distribute the awards according to the procedures and time line set forth in the Settlement Agreement and Administrative Order No. 1.